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The scope and application of the principle of universal jurisdiction

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Report of the Secretary-General

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II. Scope and application of universal jurisdiction on the basis of the relevant domestic legal rules, applicable international treaties and judicial practice: comments by Governments

Dominican Republic

The offences subject to the application of the principle of universal jurisdiction are crimes that affect the international community and thus violate the rules and provisions of international law. In such cases, the gravity of the issue in itself justifies prosecution by any member State of the international community.

Under article 26 of its 2010 Constitution, the Dominican Republic as a member State of the international community, is open to cooperation and bound to adhere to the provisions of international law: (a) it recognizes and applies the provisions of general international law and American law, insofar as its public authorities have adopted them; (b) the provisions of the international conventions that it has ratified shall be applicable as domestic law following their official publication.

Article 56 of the Code of Criminal Procedure grants Dominican courts the competence to exercise universal jurisdiction over certain crimes, which are committed fully or partially in the national territory or which produce effects therein, unless otherwise provided in international treaties or conventions adopted by public organs or in the principles recognized by general international law and American law. The national courts have the authority to prosecute cases involving genocide, war crimes or crimes against humanity, wherever committed, provided that the accused person is resident, even temporarily, in the country or that the acts caused harm to Dominicans.

In addition, article 62 of the Code establishes the competent tribunal for the application of the principle of universal jurisdiction, indicating that: "The Santo Domingo court of first instance shall have competence for cases in which a national court must investigate offences committed outside the national territory".

The Supreme Court has ruled on the principle of universal jurisdiction on several occasions. For instance, in the 16 December 2009 judgement of the Criminal Chamber (now Division) of the Supreme Court of Justice, it stated: "with regard to the jurisdiction and competence of the Dominican criminal courts, article 56 of the Code of Criminal Procedure grants our courts the legal capacity to investigate and prosecute only offences of which Dominican or foreign persons are accused and which were committed fully or partially in the national territory or produced effects therein ... Furthermore, article 62 of the Code of Criminal Procedure provides that Dominican courts may investigate offences committed outside of the national territory — which thus fall into the category of universal jurisdiction — and although that provision does not specify the offences in question, it is clear that these are very serious crimes such as genocide, crimes against humanity, money-laundering, international drug trafficking, etc., which do not apply in this case."

The judgement also states that owing to the "universal nature of some offences committed by organized crime, which were, until recently, unheard of, and to the extreme seriousness and transboundary nature that define them as crimes against humanity, all the States that have fallen victim to these offences must be permitted to prosecute and sentence the perpetrators". Universal jurisdiction has become a

necessary tool for combating impunity for certain actions or offences, the seriousness of which justifies the application of justice at the international level. The judiciary of the Dominican Republic therefore applies and considers universal jurisdiction on a case-by-case basis.

IV. Nature of the issue for discussion: specific comments by States

Cuba

The scope and application of the principle of universal jurisdiction should be discussed by all Member States in the framework of the General Assembly, primarily to prevent this principle from being invoked inappropriately. Unwarranted use of the principle of universal jurisdiction has negative effects on the rule of law at the international level, as well as on international relations.

The scope and application of the principle of universal jurisdiction should be limited, first and foremost, by absolute respect for the sovereignty and national jurisdiction of Member States. The principles enshrined in the Charter of the United Nations, in particular the sovereign equality and political independence of States and non-interference in the internal affairs of States, must be scrupulously respected in judicial proceedings.

The unilateral and selective exercise of extraterritorial criminal and civil jurisdiction by national courts has no basis in international norms or treaties. In that connection, Cuba condemns the adoption at the national level of politically motivated laws targeting other States.

The application of universal jurisdiction should be regulated internationally in order to prevent abuses and safeguard international peace and security. International regulation should consider the possibility that, when a State wishes to invoke the principle of universal jurisdiction, it should first obtain the consent of the State in which the violation took place or the country or countries of which the accused is a national. It should also establish requirements for the regulation and use of this principle, as well as its compatibility with the Charter of the United Nations, and should define it as exceptional and secondary in nature.

Its application should not violate the immunity granted under international law to Heads of State, diplomatic personnel and other serving high-level officials. Issuing charges and detention orders against such officials irrespective of their functional immunity undermines the principle of the sovereign equality and independence of States. The principle of universal jurisdiction should not be invoked to diminish respect for a country's national jurisdiction, to denigrate the integrity and values of its legal system, or for political ends, in violation of the rules and principles of international law.

Universal jurisdiction must be secondary to the action and national jurisdiction of each State. Therefore, when a case is being investigated and prosecuted by the national judicial system, universal jurisdiction should not apply. Universal jurisdiction should be exercised only under exceptional circumstances that warrant its use, and from the perspective of coexistence with national statutory and case law.

Universally acceptable international regulations must specify the crimes for which universal jurisdiction may be invoked and must define the bases for its application. Such crimes should be restricted to crimes against humanity and universal jurisdiction should be invoked only when it has been recognized that no other means of bringing a criminal action against the perpetrators exist.

Universal jurisdiction cannot be analysed without also considering the obligation to extradite or prosecute, since the purpose of both concepts is to combat impunity for certain types of crimes defined in international legal instruments. The international community has been identifying a body of crimes for which both concepts may be invoked, but it has yet to determine whether all or only a subset of these crimes are subject to both universal jurisdiction and the obligation to extradite or prosecute.

Table 3

Relevant treaties which were referred to by Governments, including treaties containing *aut dedere aut judicare* provisions

A. Universal instruments

International humanitarian law	Geneva Conventions of 1949	Cuba (stating that it introduced the application of universal jurisdiction to violations characterized as grave breaches)